



## **State and Institutional Policies on In-State Resident Tuition and Financial Aid for Undocumented Students: Examining Constraints and Opportunities**

*Gabriel R. Serna*

*Joshua M. Cohen*

Virginia Polytechnic Institute & State University



*David H. K. Nguyen*

University of North Dakota  
United States

**Citation:** Serna, G. R, Cohen, J. M. & Nguyen, D. H. K. (2017). State and institutional policies on in-state resident tuition and financial aid for undocumented students: Examining constraints and opportunities. *Education Policy Analysis Archives*, 25(18). <http://dx.doi.org/10.14507/epaa.25.2809>  
This article is part of the special issue, *Education Finance and English Language Learners: Examining Challenges and Opportunities to Improve Education Policy and Practice*, Guest Edited by Oscar Jiménez-Castellanos.

**Abstract:** In this article, we examine policies related to in-state resident tuition and state financial aid policies aimed at undocumented students. To help frame the discussion and spark further debate and research in this area the article seeks to do three things. First, it provides a comprehensive review of state and institutional in-state tuition policies aimed at undocumented students as well as state college or university system responses. Second, it charts the policy landscape for state financial aid access for this population. Third, it

examines the numerous implications that such policies engender and highlights the role of the federal government and the proposed Dream Act in mitigating some of these concerns. It closes by underscoring the important financial role played by the critical interaction of state, institutional, and federal policies in making college going a reality for these students while proposing avenues for future study around the issue.

**Keywords:** undocumented immigrants; tuition; state financial aid; educational policy; state policy; educational equity

### **Políticas estatales e institucionales sobre la matrícula de residentes y recursos financiera para estudiantes indocumentados: Examen de restricciones y oportunidades**

**Resumen:** En este artículo, examinamos las políticas relacionadas con la matrícula residente en el estado y las políticas de ayuda financiera estatal dirigidas a estudiantes indocumentados. Para ayudar a enmarcar la discusión y estimular el debate y la investigación en esta área, el artículo busca hacer tres cosas. En primer lugar, proporciona una revisión exhaustiva de las políticas estatales e institucionales de matrícula en el estado dirigidas a estudiantes indocumentados, así como a las respuestas estatales del sistema universitario o universitario. En segundo lugar, muestra el panorama político para el acceso de la ayuda financiera estatal a esta población. En tercer lugar, examina las numerosas implicaciones que tales políticas engendran y destaca el papel del gobierno federal y la Dream Act propuesta para mitigar algunas de estas preocupaciones. Se cierra subrayando el papel financiero importante desempeñado por la interacción crítica de las políticas estatales, institucionales y federales para hacer de la universidad una realidad para estos estudiantes, al tiempo que propone caminos para el estudio futuro sobre el tema.

**Palabras-clave:** inmigrantes indocumentados; matrícula; recursos financieros estatal; política educativa; política estatal; equidad educative

### **Políticas estaduais e institucionais sobre a matrícula residente no estado e recursos financeira para estudantes indocumentados: Examinando restrições e oportunidades**

**Resumo:** Neste artigo, examinamos as políticas relacionadas com a educação residente no estado e políticas de auxílio financeiro estadual destinadas a estudantes sem documentos. Para ajudar a enquadrar a discussão e estimular mais debates e pesquisas nesta área, o artigo procura fazer três coisas. Primeiro, ele fornece uma revisão abrangente das políticas estaduais e institucionais de matrícula no estado destinadas aos estudantes sem documentos, bem como as respostas do sistema estadual ou universitário estadual. Em segundo lugar, ele traça o cenário político para o acesso da ajuda financeira do estado para esta população. Em terceiro lugar, examina as inúmeras implicações que essas políticas engendram e destaca o papel do governo federal e do Dream Act proposto na mitigação de algumas dessas preocupações. Conclui ressaltando o importante papel financeiro desempenhado pela interação crítica das políticas estaduais, institucionais e federais para tornar a faculdade uma realidade para esses estudantes, ao mesmo tempo em que propõe caminhos para o estudo futuro sobre a questão.

**Palavras-chave:** imigrantes indocumentados; aula; recursos financeiros do estado; política educacional; política de estado; equidade educacional

## Introduction

Based on the U.S. Supreme Court decision in *Plyler v. Doe* (1982), undocumented students are granted unfettered access to a P-12 education notwithstanding their immigration status. However, as they matriculate and progress through their education, similar access is not available in higher education. While federal-level policies have been proposed that would remove this obstacle, the current political debate has made the passage and implementation of these policies impossible. Instead, undocumented students must rely upon piece-meal policies adopted state-by-state or institution-by-institution to determine whether they can access higher education, pay affordable tuition rates, or obtain state level financial aid (Cohen, 2014; Nguyen & Serna, 2014). This approach to financing access for undocumented students further exacerbates the difficulties that exist for undocumented students who are contributors to their communities and the tax system, as a whole (Olivas, 2009a). Undocumented students have fewer resources, less institutional knowledge, and fewer support networks (Baum & Flores, 2011). The complexity of this policy arena, compounded with the existing difficulties as an undocumented student, indicates that post-high school opportunities for undocumented students are clearly limited or often geographically bound (Baum & Flores, 2011; Chin & Jun, 2010; Nair-Reichert & Cebula, 2015). Moreover, the incoming Trump Administration has made clear its intentions to further marginalize this group with promises of a “Border Wall”, repealing DACA protections, and the signing of executive orders restricting access to refugees and other immigrants from seven Muslim-majority countries (Ainsely & Cowan, 2017; Chiacu, 2017).

In this article, we examine the many state and institutional policies related to in-state resident tuition and state financial aid aimed at undocumented students. We also examine the implications of these policies on students’ access to higher education. First, to help frame the discussion on this topic, we will present a background on undocumented students and a review of the limited literature on the topic of price-sensitivity and undocumented students’ price response behaviors. This will provide a basis for understanding how the discourse around undocumented student access and financial concerns has developed. Second, we provide a comprehensive view of state and institutional policies related to undocumented students and in-state resident tuition, as well as statewide or system-level responses (Morse & Birnbach, 2014; National Conference of State Legislatures [NCSL], 2014a, b; National Immigration Law Center [NILC], 2014a, b; Nguyen & Serna, 2014; Teranishi, Suarez-Orozco, Suarez-Orozco & Associates, 2015). Third, we take the same approach by charting the policy landscape for state financial aid access (Cohen, 2014; College Board, 2014; Gonzales, 2009; NCSL, 2014b; Perez, 2010). Finally, we explain the social, economic, and educational implications that these policies engender by highlighting the role of the federal government and the proposed Dream Act in mitigating some of these concerns in addition to the limitations that exist for students under the Deferred Action for Childhood Arrivals (DACA) policy that is now under fire in the Trump Administration (Ainsely & Cowan, 2017; Flores, 2010; Nguyen & Serna, 2014; NILC, 2014a; Olivas, 2004, 2009; Teranishi et al., 2015). This article also underscores the important financial role played by the critical interaction of state, institutional, and federal policies in making college access a reality for these students.

## Background on Undocumented Students

In a recent study published by the Institute for Immigration, Globalization, & Education at the University of California, Los Angeles (Teranishi et al., 2015), the challenges facing many undocumented students were clearly outlined. The report stated that for these students both their

undocumented and socioeconomic statuses posed a challenge to access higher education. Limitations to state and federal financial aid and the ability to access in-state tuition fees coupled with the socioeconomic and undocumented concerns cited above leaves these students with few options (Chin & Juhn, 2010). While a handful of states have sought to extend in-state tuition and financial aid to undocumented students, others have done just the opposite and instead have restricted access to in-state tuition and state financial aid by passing legislation that discriminates against undocumented students. More concerning is the fact that many undocumented students have grown up in these communities and graduated from high school in these states (Morse & Birnbach, 2014; NCSL, 2014a, b; Nguyen & Serna, 2014). Given that nearly 65,000 undocumented students graduate from the country's high schools each year (Abrego & Gonzales, 2010; Berner, 2015; Dougherty, Nienhusser, & Vega, 2010), the plight of this population should certainly be of concern to the American society. While the majority of undocumented students are from Latin American countries, it is important to underscore that a large number also come from other parts of the world, such as Korea, the Philippines, China, and India (Abrego & Gonzales, 2010; Buenavista & Tran, 2010; Passel, 2005). Regardless of their origins, it is imperative that society finds a mechanism for including these children into the formal economy (Vargas, 2011). That is to say, making these individuals part of the formal economy is imperative since they form a significant part of their communities and help support financial well-being in their local economies.

Since federal policy has been at a stand-still, state action around tuition and fees and access to financial aid is decidedly piece-meal (Nguyen & Serna, 2014). Although there is current momentum behind extending or further enhancing policies related to in-state tuition and fees, financial aid, and scholarships across the states (Olivas, 2009), even states that have historically supported in-state tuition and increased access to higher education for undocumented students are now reconsidering this action. For example, Berner (2015) and the National Center for Immigration Law (NILC, 2014b) note that states like Texas and New York, which extended in-state tuition and fees to undocumented students since the early 2000s, are now facing increased opposition to these policies, and there is a possibility that these pieces of legislation will be repealed given the current national political context and the incoming administration of President Trump. Indeed, a major concern is that the normalization of discriminatory actions and policy embedded in the current administration's political rhetoric and stances may set the backdrop for such actions to occur. According to the NILC (2014b), in the 2014 legislative session, 19 states have bills in the legislature considering the enhancement of these policies, which will be discussed in detail later in the article. It is in this context that undocumented students must navigate state-specific policies and determine how they will not only access higher education, but also pay for it. As a result, their socioeconomic concerns together with their undocumented status forces these students to face significant barriers to access and financial aid. Because of the economic barriers undocumented students face to access higher education, the next section will briefly review the literature on college student price response to highlight the importance of making higher education affordable for a large continuum of tomorrow's youth.

### **Literature on College Student Price Response**

Numerous studies have shown that price is a primary barrier to higher education access for students from families with low incomes (Archibald & Feldman, 2011; Hearn & Holdsworth, 2004; Heller, 1997, 1999; 2011a, b; Leslie & Brinkman, 1987; Paulsen, 2001; Serna, 2016). The price of a college education is the amount that a student pays, which is different from the cost of higher education that relates to the production or provision of the "service" (Heller, 1997; Leslie & Brinkman, 1987). As the price of higher education rises, it is those at the lower end of the economic

ladder that tend to be most responsive to these changes (Bowen, Chingos, & McPherson, 2009; Paulsen, 2001; Serna & Birnbaum, 2015). Demand theory states that as the price of higher education increases, enrollment numbers should decrease (Leslie & Brinkman, 1987). Demand Theory, however, should not be understood to provide a perfect heuristic for all student populations or the effects of all state policy action. Nonetheless, it does serve as a useful and well-developed guide around the typical price-response behaviors of students to exogenous changes in the economic, political, and social environment. For example, Serna (2013) showed that states have a direct impact on their undergraduate enrollments through subsidies aimed at lowering the effective price faced by students. By financially supporting their public institutions and providing state financial aid, it is possible that states can lower barriers of access for price-sensitive populations and help them access college more readily. States and institutions that pass legislation and adopt policies that make tuition affordable for undocumented students place them on a more level playing field when compared to their peers. Additionally, those states that provide state financial aid are allowing these students access much needed financial assistance during a period when the price of higher education has become out of reach for many, even at in-state tuition rates.

Examining undocumented immigrants exclusively, the literature shows that students typically come from families with low incomes. These students seldom have the necessary social and financial capital and overall support and guidance that can help them access and succeed in college (Baum & Flores, 2011; Teranishi et al., 2015). Limited access to state and federal financial aid coupled with the socioeconomic concerns, undocumented status, and high tuition prices cited above, leave many undocumented students without fruitful alternatives (Chin & Juhn, 2010; Olivas, 2009a). Additionally, studies have shown that the losses that arise as a result of bans on in-state tuition benefits are not limited to these students or their families. Recent findings suggest that undocumented students not only migrate to states that offer in-state tuition benefits, but that they are more likely to enroll and persist in larger numbers (Amuedo-Dorantes & Sparber, 2014; Baum & Flores, 2011; Flores, 2010; Flores & Horn, 2009; Flores & Kaushal, 2008). However, the results presented in these studies should not suggest that in-state tuition, nor for that matter state financial aid, have been a panacea. Indeed, few undocumented students have taken advantage of in-state tuition laws.

Based on the most recent and comprehensive data, there were over one million undocumented students in 2012; however, only a reported 7,000-13,000 undocumented students enrolled in higher education (Gildersleeve, 2010; Gonzales, 2007; Passel, 2003). The reasons for such a disparity are plentiful, but as noted in this review, it is likely the case that reporting mechanisms are not capturing all students, socioeconomic inequality limits choices for undocumented students, and many do not feel they have the ability to freely disclose their status (Amuedo-Dorantes & Sparber, 2014). As mentioned earlier, price-sensitive students are less likely to enroll in college if the benefits of doing so do not outweigh the costs (Paulsen, 2001). Hence, it is not surprising that as a result of high tuition rates and lack of state and federal aid and in-state tuition benefits that many undocumented students find that the return on investment of a higher education may not be worth it.

Moreover, this literature also highlights the fact that undocumented migrants are particularly drawn to areas that have strong economies, and there appears to be an influence both from larger migrant networks and educational opportunities (Nair-Reichert & Cebula, 2015). This line of inquiry suggests that a political and economic environment, supportive of undocumented students and their communities, provide a favorable setting for undocumented students' prospects in terms accessing higher education.

## Policies on In-State Tuition for Undocumented Students

The policy environment for in-state tuition and fees across the states has been rather variable over the past decade or so (Nguyen & Serna, 2014). Tables 1, 2, 3, and 4 provide a brief history and important notes regarding state policies around in-state tuition benefits and related measures aimed at undocumented students and their ability to access higher education. We consider each set of policies and related measures in turn but want to underscore that the delineation of policies into these categories is somewhat of a contrivance. This is because, as with most policy domains, the strict categorization required by the use of tables suggests that in fact, they can be dichotomized as such. Still, the following tables should provide substantive information for those interested in examining this policy domain in more depth.

Table 1 provides a comprehensive list of current and historic state actions regarding in-state tuition policies for undocumented students across the states up to the date of this publication. As can be seen in Table 1, 17 states have undertaken legislative action to extend in-state tuition benefits to undocumented students while Virginia has instead relied upon interpretation from its state attorney general, the state's top legal advisor, to extend benefits to a subset of undocumented students. Requirements for the extension of in-state tuition benefits vary by individual state; however, many of the qualification criteria are based on some grouping of residency duration, high school attendance, graduation, and intent to apply for lawful immigration status. While the number of states offering in-state tuition benefits continues to rise, the variability in state action is of special note here. For example, in 2008 Colorado initially banned in-state tuition benefits to undocumented students only to revoke the ban in 2013. Wisconsin provides the opposite example. In 2009, the Wisconsin legislature used its legislative budget rules to extend benefits to undocumented students. However, in 2011 it used the same legislative maneuver to rescind tuition benefits to these students in the passage of its 2011-2013 biennial budget (NCSL, 2011a).

Table 1  
*In-state Tuition Policies for Undocumented Students as of 2014*

State	Year Adopted	Legislation	Notes
California	2001	A. 540	Banned previously in 2008
Colorado	2013	S. 33	
Connecticut	2011	H. 6390	
Florida	2014	H. 851	
Illinois	2004	H. 60	
Kansas	2004	H. 2145	Limited to community colleges only
Maryland	2011	S. 167	
Minnesota	2013	S. 1236	
Nebraska	2006	L. 239	
New Jersey	2013	S. 2479	
New Mexico	2005	S. 582	
New York	2002	S. 7784	
Oregon	2013	H. 2787	
Texas	2001	H. 1403	
Utah	2002	H. 144	

Virginia	2014	N/A	Only extends to students who are covered by Deferred Action for Childhood Arrivals (DACA) and based on Attorney General's advice
Washington	2004	H. 1079 Added	
Wisconsin	2009	using budget Law	Revoked 2011 using budget law

*Note:* Sourced from Morse & Birnbach (2014); NCSL (2014a, b); NILC (2014a); Nguyen & Serna (2014).

As mentioned in the previous section, some states, such as Texas and New York, which have had a long history of offering in-state tuition benefits to undocumented students, are now facing possible repeal of these policies (Berner, 2015; NILC, 2014b). The case of Texas is surprising given that it was the first in the nation to take such action. Nonetheless, under proposed Senate Bill 1819 in 2015, these benefits would have been withdrawn if adopted. In the case of New York, the state faced legislation aimed at both enhancing benefits to undocumented students through a state-level Dream Act (A. 04311/S. 01251) and an outright ban on undocumented student enrollment at public institutions (A. 02463). The fate of this legislation in both states remains unclear as this article goes to print though in New York, it is clear that the Dream Act was not part of the governor's budget as of April 1, 2015 (Berner, 2015). These anticipated legislative actions also provide insight into the divisive political climate sweeping the country against immigrants, generally.

The states of Florida, Virginia, and Tennessee have been the most recent states to explore extending benefits to undocumented students. While Tennessee recently sought to extend in-state benefits to undocumented students, the legislation failed by just one vote (Boucher, 2015). Tennessee offers in-state tuition benefits to those students who are in the US legally (as U.S. citizens) but whose parents are themselves undocumented with additional requirements. While only a partial remedy, this policy action may imply that the extension of in-state tuition benefits is on the horizon in Tennessee. Florida and Virginia successfully extended tuition benefits to undocumented students; however, these states added limitations and restrictions to the eligibility of these benefits. Virginia's policy is limited only to those who are legally present under President Obama's DACA executive order and is understood to apply in such a manner based upon the advice from the state's attorney general (NCSL, 2014b).

On the other hand, Florida has passed legislation allowing undocumented students to benefit from in-state tuition, so long as they attend a Florida high school for three consecutive years, graduate within that time frame, and have applied to colleges within 24 months of graduation. In addition, since undocumented students are considered non-residents, once the number of non-resident students exceed 10% of the State University System student population, undocumented students may be required to pay the higher non-resident tuition rate (NCSL, 2014b). While limited, both of these examples seemingly provide evidence that the issue of undocumented students' access to higher education is slowly coming to occupy a central place in public policy discussions (Dougherty et al., 2010), especially because, as pointed out by Olivas (2009a), "both advocates and opponents have targeted this issue as an important line in the sand" (p. 413). This notion is supported by evidence from the NILC (2014b) which indicates that, as of late 2014, at least 19 states were considering legislation related to either augmenting existing laws or adding new ones regarding undocumented student access and in-state tuition benefits including, for example, Connecticut (S.B. 398) and Pennsylvania (S.B. 713).

While many states have decided to lower the barriers to access for undocumented students by implementing policy equalizing tuition at the in-state resident rate, some have decidedly focused on discriminating against and restricting access for undocumented students to benefit from in-state tuition or disallowing enrollment at public institutions by students with undocumented status. Tables 2 and 3 provide basic historical and legislative information about each type of policy. Currently, three states explicitly disallow in-state tuition benefits for undocumented students, and two disallow enrollment by these students at public institutions.

Table 2  
*State Policies Disallowing In-State Tuition Benefits*

State	Year Adopted	Legislation
Arizona	2006	Prop. 300
Georgia	2008	S. 492
Indiana	2011	H. 1402/ S. 207

*Note:* Sourced from Morse & Birnbach (2014); NCSL (2014a, b); Nguyen & Serna, (2014)

Table 3  
*States with Policies Disallowing Enrollment at Public Institutions by Undocumented Students*

State	Year Adopted	Legislation
Alabama <sup>1</sup>	2011	H. 56
South Carolina	2008	H. 4400

*Note:* NCSL (2014a,b)

While Arizona and Georgia have banned in-state tuition for undocumented students out-right in 2006 and 2008, respectively, Indiana initially banned in-state tuition for all undocumented students in 2011, but in 2013, the Indiana General Assembly passed legislation to grandfather those students enrolled in 2011 to receive their previously entitled in-state tuition rates (Nguyen & Martinez Hoy, 2015). In addition, while Indiana's legislation states that "[a]n individual who is not lawfully present in the United States is not eligible to pay the resident tuition rate" (H.B. 1402), it is argued that those students who are "documented" through the federal DACA program are lawfully present, and therefore, those "DACAdmented" students are eligible for the resident in-state tuition rate in Indiana (Nguyen & Martinez-Hoy, 2015). While this has not been addressed in the legislative arena, some public institutions in Indiana are interpreting the law to permit undocumented students to benefit from in-state tuition.

In Table 3, these states have not just prohibited the benefits of in-state tuition rates to their undocumented students, but they have taken a further stance to ban undocumented students from enrolling in their public institutions of higher education, even if they could afford the higher non-resident tuition rate. These states include Alabama and South Carolina. As mentioned earlier in this article, these kinds of policies typically serve to drive immigrants away from these states and economies. Other states are considering repealing their current

<sup>1</sup> Alabama's community college system also disallows enrollment of undocumented students.



benefits for undocumented students and implementing restrictive policies. These are examples of the growing trend against immigrants and immigration. In addition to pending legislation cited earlier in Texas and New York, Kansas (H.B. 2139) and Missouri (H.B. 1637) are considering similar legislation regarding either a repeal of in-state benefits or a ban on enrollment by undocumented students. Again, the variability among the states and the constant changes with regard to extension and limitation of benefits is clear. State legislation is not the only arena where policy is being made or interpreted.

While states have played an instrumental role in granting and restricting access, courts have also had a hand in shaping the policy discourse and landscape around the issue. Although it is beyond the scope of this study, a comprehensive grouping of studies, data, and information on these cases is available from the University of Houston's Institute for Higher Education Law and Governance (<http://www.law.uh.edu/ihelg/>). Additionally, individual university systems or boards of regents are also determining how to broach the subject. Table 4 provides a brief overview of these institutional policies.

At least six institutional systems or boards of regents have adopted policies pertaining to undocumented student access and in-state tuition benefits. The boards of regents of the university systems of Michigan, Hawaii, and Rhode Island have adopted actions affording in-state resident tuition benefits to their resident undocumented students. As a counter-measure against the Georgia's legislature ban on in-state tuition for undocumented students, the system board of regents approved in 2010 the ability of undocumented students to access in-state tuition so long as they can verify that they are lawfully present in the country. In Oklahoma, while the state legislature failed to pass any legislation affording benefits, they delegated their authority to the board of regents of the Oklahoma State System. In turn, the System has authorized in-state tuition for undocumented students. However, in North Carolina, the North Carolina Community College System has allowed access to its colleges, but undocumented students must pay at the non-resident rate. These varying institutional policies are perfect illustrations of how piece-meal policymaking in this area can be challenging for undocumented students to navigate.

Finally, in the beginning of this section we underscored the variability of policies across states and even across institutions within the same state regarding in-state tuition benefits for undocumented students. The goal was to highlight just how variable the policy environment remains as undocumented students continue to rely upon state or institutional policies in order to access public higher education. This is to say nothing about the plethora of cases brought before the courts. Although many states and institutions provide access to resident in-state tuition to undocumented students compared to the handful that are discriminatory and restrictive, it goes without saying that the paying for higher education is a challenge to absorb without financial aid. Many college students attend an institution of higher education with the assistance and assurance of federal and state loans, grants, and scholarships, private loans and scholarships, and family assistance. Unfortunately, undocumented students do not have the same access to financial assistance. With this in mind, the following section examines the policies related to state-level financial aid for undocumented students.

Table 4:

*Statewide System Actions*

College/University or System	Year Adopted	Notes
North Carolina Community College System	2009	Allows access to CCs but at out-of-state tuition levels
Oklahoma State System	2007	Amended to give authority to Board of Regents under H 1804. In-state tuition for undocumented students currently authorized
University of Georgia System	2010	Must verify "lawful presence" to obtain in-state tuition benefits
University of Michigan Regents	2013	
University of Hawaii System	2013	
University of Rhode Island	2011	

*Note:* Sourced from Morse & Birnbach (2014); NCSL (2014a, b); Nguyen & Serna (2014)

### Financial Aid for Undocumented Students

When we begin examining the issue of financial aid for undocumented students, the policy landscape remains increasingly challenging. Federal financial aid, known as Title IV aid, is not available to undocumented students (Federal Student Aid, 2014; Flores, 2010; Olivas, 2009a). This is because of technical and legal issues. When filing the Free Application for Federal Student Aid (FAFSA), students and dependent parents must provide valid Social Security numbers (SSN). This is used by the Department of Education's central processing system to cross-check applications with various federal agencies in order to validate citizenship status, income, and taxes (Federal Student Aid 2014). Since proof of citizenship is a requirement for a SSN (Social Security Administration, 2013), undocumented students are unable to provide this identification number to process a FAFSA. On a related note, individuals who have been granted Deferred Action for Childhood Arrivals (DACA) status are also unable to qualify for Title IV aid. However, many undocumented individuals nonetheless, pay taxes using a Taxpayer Identification Number (TIN) and thus contribute to the nation's economic and tax system while being unable to benefit from federal aid (Olivas, 2009a).

Legally, federal financial aid became impermissible to undocumented students with the passing of the Higher Education Act of 1965 (HEA) and its subsequent reauthorizations. The HEA required that only citizens and eligible non-citizens were eligible for federal financial aid. Currently, eligible non-citizens are U.S. nationals, permanent residents, refugees, asylees, victims of human trafficking, victims of domestic abuse, and other more specialized categories. While undocumented students do not fall into any of these categories, per se, DACA recipients also are not eligible for federal financial aid. Given that there are cost-barriers to higher education, without access to federal financial aid, these cost barriers make the price of college unaffordable (Nguyen & Martinez Hoy, 2015).

This HEA provision has societal implications that further segregates undocumented students from their mainstream society (Nguyen & Martinez Hoy, 2015). First of all, it is a visible illustration that certain non-citizens are prioritized or more important to the country than others. Secondly, it further creates an underclass of people in our society. In addition, without receiving similar benefits

to their peers, this impacts students' opportunities, sense of efficacy, and abilities to contribute to their communities, among others.

With more than 11 million undocumented immigrants currently residing in the United States (Baker & Rytina, 2013), the inability to access federal financial aid has serious implications for college enrollment. This is especially true, considering that: 1) in 2012, 73% were from Latin American countries; and 2) a growing body of literature suggests that individuals from these countries may be more price sensitive to college costs (Erisman & Looney, 2007; Hagy & Staniec, 2002; Post, 1990). Thus, current financial aid policy poses serious implications for postsecondary access to a growing segment of the population.

Although undocumented immigrants are not offered Title IV aid, there are currently six states that allow undocumented students to access some form of state financial assistance. Each of these states, along with their policies, are listed in Table 5. While the requirements vary by individual state, similar to the granting of in-state tuition benefits, qualification is based on some combination of residency duration, high school attendance, graduation, and intent to apply for lawful immigration status.

Just as it was the first state to pass an in-state resident tuition policy for undocumented students (Flores 2010), Texas also became the first state to award undocumented students state financial aid. The state's need based aid program, called the TEXAS (Toward Excellence, Access, & Success) grant, is restricted to state residents (Texas Education Code § 56.304). However, due to two pieces of legislation (HB 1403 and SB 1528), undocumented students can claim residency for tuition purposes if they graduate from a Texas high school with a high school diploma or general educational development (GED) certificate, reside in the state for three years leading up to graduation, and sign an affidavit declaring intent to apply for legal residency status (Texas Education Code § 54.052). Thus, in somewhat of an indirect manner, undocumented students can access the TEXAS grant through their qualification for in-state tuition resident tuition.

Table 5

*States with Legislation Providing State Financial Aid to Undocumented Students*

State	Year Implemented	Legislation
Texas	2001	H.B. 1403
	2005	S.B. 1528
New Mexico	2005	S.B. 582
California	2011	A.B. 130
	2011	A.B. 131
Colorado	2013	S.B. 13-033
Minnesota	2013	S.F. 723/HF 875
Washington	2014	S.B. 6523

*Note:* Cohen (2014)

Unlike Texas, New Mexico's Senate Bill 582 explicitly grants "state funded financial aid" to undocumented students (New Mexico Administrative Code 5.7.18.10 Section K "Nondiscrimination Principle"). The state has by far the most lenient requirements for undocumented students. They must attend a New Mexico secondary educational institution for at least one year and graduate from a New Mexico high school or receive a state GED certificate. There have been unsuccessful attempts at repealing these benefits (H.B. 173).

California, Colorado, Minnesota, and Washington have all passed legislation explicitly granting undocumented students access to state financial aid, based on similar requirements: 1)

applicants must attend a state high school for at least three years; 2) applicants must graduate from a state high school with a high school diploma or a GED certificate; and 3) applicants must sign an affidavit stating their intent to apply for lawful immigration status. Although California originally required that such aid only come from non-state funds (California Education Code § 66021.7), this was soon changed to include all types of state financial assistance (California Education Code § 66021.6, § 69508.5, § 76300.5). Similar to California's original legislation, Minnesota's Dream/Prosperity Act restricts undocumented student financial aid to private sources (Minnesota Statute § 134A.043). The only type of state financial aid that undocumented students in Colorado can access is the Colorado Opportunity Fund (COF), a type of stipend that provides tuition vouchers, in lieu of direct legislative appropriations, to resident students (Colorado Revised Statutes §§ 23-18-201-202). Senate Bill 13-033, referred to as the Colorado ASSET legislation, extends in-state resident tuition and COF benefits to undocumented students. Finally, Washington's Real Hope Act does not place restrictions on the type of state financial aid available to undocumented students (See SB 6523). But, as a need based program it does require students to demonstrate financial need. In addition, the Washington State Need Grant is only available to DACAmented students who are legally present in the US through the DACA program.

And while a handful of states allow undocumented students to access their financial aid programs, at least one state has affirmatively restricted undocumented students from these benefits. Through the same legislation restricting in-state tuition benefits to undocumented students, Arizona also barred these students from accessing financial aid (NCSL, 2014a). Finally, the majority of state financial aid policies outlined above are evidence of progress in the area of access to postsecondary education for undocumented students. In fact, in 2012, 36% of the undocumented immigrant population (4,650,000 people) in the United States resided in California and Texas, the two states with the highest population of undocumented students (Baker & Rytina, 2013, 5). While this suggests that a sizable proportion of the undocumented student population are currently living in states where they can access financial assistance for higher education, it also indicates that many may be situated in places without such access.

### **Implications and Future Areas for Research**

State and institutional policies that impact access to higher education for undocumented students have many implications for individuals, states, and society on the whole. States with policies that restrict access to higher education for undocumented students are potentially losing a large number of skilled and educated workers (Abrego & Gonzales 2010; Nair-Reichert & Cebula, 2015). Vargas (2011) stressed the need to incorporate undocumented students into the formal economy. Many undocumented students already participate in the economy and contribute to the tax-base (Olivas, 2009a). However, they are unable to access the benefits that are afforded to taxpayers, including federal aid, in-state tuition benefits, and state financial aid. By providing a comprehensive overview of both state and institutional policies, our hope is that this article and its accompanying analysis can provide the groundwork for further study around why states and institutions adopt the policies for undocumented students. Because many of the students impacted by these policies have made the United States their home (Abrego & Gonzales, 2010), the piecemeal policies and legislation in place are only partial remedies. Below we highlight several critical implications that these policies have on undocumented students.

Economic losses resulting from bans on in-state tuition benefits or access to state aid programs do not only impact undocumented populations. Job-market outcomes and the social-good of the state are impacted when a large proportion of the population is limited by their

undocumented status (Abrego & Gonzales 2010). The difficulty is that these students are often severely limited by both their undocumented and socioeconomic statuses. Olivas (2009a) notes that students with an undocumented status are often in limbo economically and legally because of the multitude of laws and the interpretations and enforcement of regulation. For communities that want undocumented students to thrive, there must be access to good and affordable education (*Plyler v. Doe*, 1982). Based on the *Plyler* decision, public school districts should not require any information that may identify a student's or family's immigration status. It is important to note that some states that have anti-immigrant policies require their public schools to track and report students' and families' immigration statuses. These policies and practices inhibit children's education by creating fear. Moreover, community that embrace diversity with welcoming environments are more likely able to attract talent and cultural wealth. In order to match the educational attainment and success in grade levels K-12, access to higher education for undocumented students must be unfettered and equal to their peers.. Unfortunately, until the federal government passes comprehensive immigration reform that includes providing access to federal aid, states and institutions will remain the primary players in this policy domain.

Higher education is often considered the best way to promote social mobility; as a result, greater access to higher education for undocumented students will advance the American society, workforce, and economy – as a whole. However, recent studies show that postsecondary opportunities for undocumented students remain rather limited (Baum & Flores, 2011; Chin & Jun, 2010; Nair-Reichert & Cebula, 2015), and as a result, undocumented students not only migrate to states that offer in-state tuition benefits, but they are more likely to enroll and persist in larger numbers (Amuedo-Dorantes & Sparber, 2014; Baum & Flores, 2011; Flores, 2010; Flores & Horn, 2009; Flores & Kaushal, 2008). In addition to these findings, when considered with the multitude of state policies, this compounding of challenges highlights the importance of the role of the federal government. A federal level Dream Act is arguably the best tool for mitigating these concerns by providing permanent relief instead of the temporary and limited benefits that exist for students under the DACA policy. A federal level Dream Act would provide a pathway to citizenship for undocumented students brought to the US as children and ostensibly include a provision for the treatment of these students by states and their postsecondary institutions; though requirements around financial aid and in-state tuition benefits could be left largely to state legislatures (NILC, 2014a). In other words, a federal level policy would not disallow states to continue their own policy making (Dougherty, Nienhusser, & Vega, 2010). While in-state tuition benefits and access to state financial aid programs can help lower price barriers, they are likely more symbolic. Because federal aid provides the largest portion of funding to support students' college education, the important financial role played by the critical interaction of state, institutional, and federal policies in making college going a reality for these students is further accentuated (de la Rosa & Tierney, 2006). Otherwise, it is possible to make the case that these policies, while useful in their own ways, are largely symbolic.

The policy landscape has created additional challenges for K-12 teachers and counselors as well as higher education faculty and professionals. Since teachers and higher education professionals are often the first point of contact and advocates for these students, they are often able to build a relationship of trust throughout the years. They are most capable to respond to these students' needs and help them navigate the maze of policies. In addition to guiding undocumented students through the typical college admissions tests, admission applications, college choice, and financial aid, those that work with undocumented students

must understand the myriad of state and institutional policies to help undocumented students understand whether they are able to enroll and afford their higher education. Due the confusing nature of state policies pertaining to undocumented students and tuition at postsecondary institutions, many high school counselors are failing to deliver some of the most current information on higher education access (Pérez, 2014). A national policy on undocumented student tuition would certainly be an improvement in delivering proper information.

Faculty, staff, and student affairs professionals on college campuses must stay abreast of the ever-changing policy landscape to best navigate and support their students whether in-state tuition and financial aid benefits are available. Both Perez (2010) and Serna (2017) provide concrete strategies for doing so. The struggle is even more pronounced if these resources are unavailable to the student. Support services for undocumented students will become necessary since few of these students have the necessary social capital and overall familial or community support to help them succeed in college (Baum & Flores, 2011). As a result, some colleges and universities have allocated specific funding to operate to maintain offices and staff professionals dedicated specifically to guide undocumented students through the college process.

Since federal financial aid is unavailable and many states have yet to afford state-level financial aid, private scholarships and funding is necessary to provide much needed financial aid for undocumented students (see Perez, 2010, [mydocumentedlife.org](http://mydocumentedlife.org), and [Unitedwedream.org](http://Unitedwedream.org), for a list of notable examples). While there are several scholarship funds that are targeted to undocumented students, institutions wishing to recruit undocumented students need to identify and cultivate private donations that do not require citizenship; a wholly new structure when compared to the many current scholarships have such a requirement. This is especially true at public institutions where in-state tuition benefits are not possible for undocumented students. Private institutions in these states may help by offering private scholarships and creative funding opportunities that reduce the financial obligation of undocumented students and their families. Besides the educational barriers, these anti-immigration restrictions create immense fear of deportation and anxiety for undocumented students and their families, only to add another obstacle to educational attainment (Abrego, 2008; Abrego & Gonzales, 2010). Furthermore, even in states providing in-state tuition and financial aid for undocumented students, many of these students are not taking advantage of such subsidies. In fact, in 2015 “[o]nly 67 percent of grants awarded ... to undocumented students in California were used” (Harvin, 2016). Such a statistic raises concerns for the future of student access.

Finally, in addition to this examination of state and institutional policies concerning undocumented students’ access to higher education, there are several areas for future research. While Vargas (2011) and Dougherty, Nienhusser, and Vega (2010) have provided a solid foundation, future research could explore factors that lead to the adoption of these kinds of policies. For example, Alabama passed its legislation after Indiana and South Carolina with a very similar set of policies impacting undocumented students. Understanding this type of diffusion would likely provide useful information. In addition, multiple scholars have indicated that obtaining a proper count of and helpful information on the undocumented population is extremely difficult for many reasons we have discussed (Amuedo-Dorantes & Sparber, 2014; Passel 2003, 2005). A fruitful future area of research could explore ways to better collect data while building trust and ensuring confidentiality with these students. Finally, through both quantitative and qualitative analyses, researchers may be able to provide information about the relationships between undocumented students’ ability to access higher education and future life and professional work outcomes. These together could translate into an understanding that cultivates policies and laws that allow undocumented students to come out of the shadows.

Because undocumented students are a vulnerable population, examining policies that impact their access to higher education can provide constructive information and help to inform the policy discourse. While federal intervention and a reformation of immigration policy is likely to be the best remedy to provide access to undocumented students, the role of states and institutions cannot be discounted. Indeed, under the Trump Administration and within the highly divisive nature of the political environment, local action may be the best mechanism for making higher education more accessible to undocumented students. It is through complex and numerous local policies that this population has been able to gain better access to postsecondary education indeed, the states are the laboratories where policy ideas and solutions are being developed and tested.

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## About the Authors

### **Gabriel R. Serna**

Virginia Tech  
[gaserna@vt.edu](mailto:gaserna@vt.edu)

Dr. Serna is an Assistant Professor in the School of Education at the Virginia Polytechnic Institute and State University. His research interests focus on the economics and finance of higher education, student price-response, undocumented students, and enrollment management. His research has been nationally recognized by the National Education Finance Conference and the *Journal of Education Finance*. He holds a Ph.D. in education policy from Indiana University Bloomington, an MPP in public finance and budgeting from the Martin School of Public Policy & Administration at the University of Kentucky, and a BBA in economics from New Mexico State University.

### **Joshua M. Cohen**

Virginia Tech  
[jmcohen@vt.edu](mailto:jmcohen@vt.edu)

Joshua Cohen is a Visiting Assistant Professor in the School of Education at the Virginia Polytechnic Institute and State University. His research interests are in the areas of higher education finance, budgeting, university debt and capital budgeting, quantitative methods, philosophy of social science. He holds a Ph.D. in Higher Education and Student Affairs Leadership, as well as an M.A. and B.A. in English literature, from the University of Northern Colorado.

### **David H. K. Nguyen**

University of North Dakota  
[david.hk.nguyen@und.edu](mailto:david.hk.nguyen@und.edu)

Dr. David Nguyen is an assistant professor in the higher education program in the Department of Educational Leadership and affiliate assistant professor of law at the University of North Dakota. His research focuses on the intersection of law and policy with higher education and examines the policies and practices that address inequities of access of education for underrepresented students. Dr. Nguyen also studies the globalization and internationalization of higher education, with specific emphasis on the international student experience on host campuses. Dr. Nguyen is admitted to the bars of the federal and state courts of Indiana and North Dakota.

## About the Guest Editor

### **Oscar Jimenez-Castellanos**

Arizona State University  
[jimenezcastellanos@asu.edu](mailto:jimenezcastellanos@asu.edu)

Dr. Oscar Jimenez-Castellanos is an Associate Professor in Education Policy and Evaluation in Mary Lou Fulton Teachers College at Arizona State University and a 2016-17 Visiting Scholar at UC Berkeley, Graduate School of Education with a courtesy affiliation with Policy Analysis for California Education (PACE). He has published extensively in the area of K-12 education finance, policy and parent engagement and its impact on opportunity, equity and outcomes in low-income ethnically and linguistically diverse communities. Dr. Jimenez-Castellanos is a 2015-16 Morrison Institute Faculty Fellow, 2015 Distinguished National Education Finance Fellow, a 2014 School Finance Fellow with the Intercultural Development Research Association (IDRA) and a 2012 Ford Postdoctoral Fellow administered by the National Research Council of the National Academies. He was bestowed the honor of a Fulton Professor in 2011 and served as Arizona's Acting Director of the University Research Council (URC) in Education in 2011-12.

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Volume 25 Number 18

February 27, 2017

ISSN 1068-2341



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